IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 87 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYRAMBHAI JIVANBHAI KOLIPATEL

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Appellant
THROUGH JAIL for Appellant
MR KP RAWAL, APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 04/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

The appellant was the accused in Sessions Case No.114 of 1996 before the learned Additional Sessions Judge, Valsad who, by his judgment and order dated 24th November, 1998, convicted him of the offence under Section 302 of the I.P.C. and sentenced him to life imprisonment and to pay a fine of Rs.1,000/-, in default, imprisonment for one month. He was acquitted of the offence under Sections 504 and 506(2) of the I.P.C.

2. The charge against the appellant was that on 23rd April, 1996, he gave a merciless beating with firewood to deceased Gitaben who was living with him as his mistress and thereby caused her death. The place of incident was the hut of the accused in village Bilimora-Desra, Oriamoria, Taluka Ganadevi, District Valsad.

3. The prosecution case is to be found in the evidence of the complainant Bhikhiben Mohanbhai Patel (p.w.2). According to her, at the time of the incident, she and her son Kantu and daughter Sumitra were living together. Sumitra was a widow. Sumitra's son and daughter too were living with them. Her son Kantu was a casual labourer and unmarried. Her daughter Gita, who was younger than Kantu, was living with the appellant in the hut next to hers. The appellant had been previously married at village Vaghrej and his wife was living there. Gita had one son by the accused called Sandeep. The appellant was a truck driver. The appellant and Gita had frequent quarrels. The appellant used to get provoked and pick quarrels with Gita. The incident occurred about two years ago. It was about 9.00 o'clock at night. The appellant had returned from work and she was in her hut. At that time, there was a quarrel between the appellant and Gita over cooking a fish dish. She, her daughter Sumitra and her son, therefore, went to Gita's hut. When they tried to intervene to rescue her, the appellant rushed to beat them and they ran away. The appellant was armed with a piece of firewood and he was beating Gita. They ran away to the place of their sister who was living at Vakharia Bandar Road. They stayed the night and the next day there. On the next day at about 11.00 o'clock in the morning, her another sister Ichchiben came to the place of her sister Chanchalben who was living on the Vakharia Road. She came looking for her since she had not gone to work. Before coming to Chanchalben's place, Ichchiben had gone to their hut. Ichchiben came and told her that the appellant had killed her daughter. She, her daughter Sumitra and her sister Chanchalben, therefore,

went back to their place. They saw that Gita was lying dead in her hut. She had injuries on different parts of her body. At that time, the appellant and Gita's son were also there in the hut. Thereafter, she, accompanied by her daughter Sumitra and her sister Chanchal, went to the police station. Her complaint (Exh.13) was recorded at 1.00 p.m. on 25th April, 1996 in the Bilimora Police Station by P.S.I. Jethalal Patel (p.w.7).

4. Bhikhiben's daughter Sumitra Balabhai (p.w.4) has also corroborated the evidence of Bhikhiben in material particulars. According to her, the appellant used to get drunk and quarrel with Gita everyday. When they went to intervene, the appellant used to rush at them. The incident occurred at about 9.00 o'clock at night. The appellant had beaten Gita since Gita had not cooked fish. She, alongwith her mother and brother, had gone to rescue Gita. At that time, the appellant was beating Gita with wood and when they tried to free Gita, the appellant rushed to beat them also and they, therefore, went to the place of their aunt Chanchalben. Next day, her other aunt Ichchiben came and told them that Gita had died because of the beating. They, therefore, went to Gita's place. There were injuries on Gita's body. At this stage, she was permitted to be cross-examined by the learned Public Prosecutor and then she admitted that she had said in her police statement that Gita's husband was also in the hut and Gita's son Sandeep had also told them that the appellant had beaten his mother.

5. Chanchalben (p.w.3) has said in her evidence that Bhikhiben, Sumitraben and Sumitra's two sons had come to her place at about 9.00 o'clock at night and Kantu came afterwards. Bhikhiben had told her that the appellant had come rushing to beat them and hence, they had run from there and they had stayed that night at her place. Next day, Ichchiben came and told her that the appellant had killed Gita. They went to the place of Bhikhiben where Gita's dead body had been laid down. This witness was declared hostile and in cross-examination by the learned Public Prosecutor, she admitted having said in her police statement that when Bhikhiben and Sumitra came to her place, they had told her that the appellant was beating Gita with wood and when they went there, the appellant got provoked, gave abuses and threatened to kill them.

6. The evidence of Dr. Bharatbhai R. Patel (p.w.1) who carried out the post-mortem examination of the dead body of Gita in the evening on 25th April, 1996 shows that there were the following external injuries on the

dead body of Gita:

Head -> Rt side forhead contused abrasion 2.5 cm
x 2.5 cm
Face -> Rt side Maller Convex 2 Parallel
contusion
(1) 3 cm long x 1/2 cm wide} dark
} blackish
(2) 2 cm long x 1/2 cm wide} colour
Lt side on Maller Prominence dark
blackish colour Contusion 2.5 cm
Chin -> Rt side dark contusion 3.5 cm x 2.5 cm
Lt side Mid Part of Mandible region
dark colour contusion 4.5 cm long
3.5 cm vertical
2.5 cm oblique
Neck -> Ligature mark one oblique dark black
10 cm long 1/2 cm wide skin deep Middle
anterior Part of neck (Rt)
other Ligature mark ant Part + lower Part
of neck (below 1st one) transverse 6 cm
long 1/2 cm wide skeep deep (Rt).
Chest -> Rt side lower side of chest antly.
irregular in shape 4.5 cm in diameter
dark black colour contusion
Abdomen -> Lt side to epigastric region scattered
skin deep abrations and contusions.
Rt thigh-> Mid-hat Part Puncture wound 1 cm wide
oval shape 1 cm deep
Lower 1/2 ant Part scattered contusion &
abrasion upper 1/3 inner side of thigh
scattered irregular dark black colour
abrations
Rt leg -> lower 1/2 Medial Part irregular dark
colour contusion.
Lt leg -> (1) Middle ant Part C.L.W. 3.5 cm
oblique 1/2 cm centrally wide bone deep.
(2) 1 cm away from 1st C.L.W. 2 cm long
1/2 cm wide bone deep.
upper 1/3 scattered multiple contusion.
Rt hand -> lower 1/3 Post Medial Part scattered
irregular abrased contusions.
Lt hand -> thumb - crushed total tip of the thumb
nail intact
Back -> lower Part back of chest lt side
contusion 4.5 cm in diameter.

On the internal examination, he found that the brain, the trachea and both the lungs were congested. The liver and spleen were also congested. According to him, the death must have been caused due to Cardio-respiratory arrest

caused by shock due to multiple injuries. In cross-examination, he said that except the injury on the neck, other injuries were not sufficient to cause death, which obviously means that the injury on the neck was sufficient to cause death.

7. In his statement recorded under Section 313 of the I.P.C., the accused said that he had been falsely implicated.

8. The learned Additional Sessions Judge, Valsad accepted the evidence of Bhikhiben and Sumitra as reliable and, in view of the medical evidence, recorded the finding that the death was homicidal and it was the appellant who had caused injuries which had resulted in the death of Gitaben. He, therefore, found the appellant guilty of the offence under Section 302.

9. The appellant has, therefore, filed this appeal challenging his conviction and sentence.

10. The learned advocate for the appellant has taken us through the entire evidence on record which has been outlined above. The prosecution case rests mainly on the evidence of Bhikhiben (p.w.2) and Sumitraben (p.w.4), the mother and sister of the deceased who were living next door. They belong to the lower strata of society and both of them have given their evidence in a natural manner. Both have stated that the appellant used to get drunk and often used to beat Gita. Nothing substantial has been brought out in the cross-examination which would shake their version. It is submitted by the learned advocate for the appellant that Bhikhiben has admitted in her evidence that it was not stated in her complaint that they went to rescue Gitaben. However, what is stated in her complaint is that the appellant started beating Gita and came to their hut which was next door and he threatened to kill them unless they left. Thus, there is no material omission. The fact is that both Bhikhiben and Sumitraben who were living next door saw the appellant beating Gita. Then, it was argued that even after Bhikhiben and Sumitra saw the appellant beating Gita, they went to Chanchalben but did not go to the police to lodge a complaint. One should remember, however, that the parties belong to the lower strata of society and such quarrels and beating are usual occurrences in their community and merely because Bhikhiben did not immediately lodge a complaint with the police, their evidence cannot be discarded as unreliable.

11. It may be stated that Bhikhiben's son Kantu too

had gone with Bhikhiben and Sumitra to free Gita, who had died before the trial. It was argued that Gita's son Sandeep has not been examined as a witness but the learned Additional Sessions Judge has rightly observed that mere failure to examine a child of tender years (his age is mentioned as 3 years in the FIR) does not detract from the value of evidence of Bhikhiben and Sumitra when their evidence is found reliable and trustworthy.

12. It is not the appellant's case that he had gone to work and was not at home during the period in question. Once we accept the evidence of Bhikhiben and Sumitra, it follows that it was the appellant who had caused injuries found on the dead body of Gita. The medical evidence clearly shows that the death was due to cardio-respiratory arrest caused by shock due to multiple injuries and in particular, injury on the neck was sufficient to cause death. Once it is established from the evidence of Bhikhiben and Sumitra that it was the appellant who was the author of those injuries, it follows that the appellant is guilty of the offence under Section 302 of the I.P.C. The learned Single Judge has, therefore, rightly convicted him of the said offence. There is no merit in the appeal and the same is, therefore, dismissed.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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